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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fourteenth session

SUMMARY RECORD OF THE 10th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 6 May 1996, at 3 p.m.

Chairperson: Mr. ALSTON

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The meeting was called to order at 3.20 p.m.

STATEMENT BY A NON-GOVERNMENTAL ORGANIZATION

1. Ms. BONNER (International Baccalaureate Organization) said that her organization had been in existence for 30 years and its curriculum was taught in some 600 schools around the world. One of the essential pillars of that curriculum was the teaching of human rights.

2. Human rights education in the International Baccalaureate aimed to educate young people to act intelligently and responsibly in a complex global society. At the same time, it sought to ensure knowledge of academic disciplines and of the student's own heritage, while fostering intellectual curiosity and openness to new ideas. Its objectives included: learning how to learn, relating to one's national identity and understanding the traditions of others, making wise choices, resolving conflicts peacefully, promoting international understanding, tolerance and respect for others, reflecting critically and reaching considered conclusions, and becoming responsible citizens in the community through social service, which was a requirement for the award of the diploma. The organization believed that the International Baccalaureate should help students to become active participants in the world and thus promote peace, human rights and democracy. Students should understand that the world was interdependent. They should, moreover, be aware that there was no single correct way but many equally valid ways of living.

ORGANIZATION OF WORK (continued)

3. The CHAIRPERSON invited the Committee to consider the list of reports pending consideration at its fifteenth session. He recalled that five reports had been scheduled for consideration at the current session but the Dominican Republic had withdrawn - too late for another country to be notified. The workload for the current session was therefore very light. At the same time, reports were mounting up, and he proposed that at its next session the Committee should deal with at least five, and a maximum of six, reports.

4. Mr. GRISSA said that, since the report on Macao would be very brief, the Committee could perhaps add the initial reports of Libya and Guyana to the list for the next session.

5. Mr. ALVAREZ VITA endorsed that suggestion and expressed concern that, compared with other treaty bodies, the Committee seemed to get through rather few reports each year. He agreed that the matters dealt with were more complex than in the case of some of the other Committees, but believed that more time should be devoted to studying reports and perhaps less to the organization of work.

6. The CHAIRPERSON observed that the Committee took about the same amount of time to consider a State party report as the Human Rights Committee and the Committee on the Rights of the Child. That was not to say that the Committee could not handle a greater number of reports each session.

7. Mr. CEAUSU considered that the optimum number of reports per session was five; however, given that reporting countries sometimes failed to appear, it might be advisable as a precaution to list six reports for consideration and keep one in reserve in case of a withdrawal. As a matter of principle, the six reports listed for consideration should include two initial reports; the list for the next session in fact included two second reports and three third reports. In his view, it was very important that some priority should be given to initial reports. A number of States were supposed to have submitted an initial report some 10 or 20 years before. Letters should be sent to those States urging them to comply, and at least one initial report should be placed on the Committee's agenda at each session.

8. He pointed out that the Committee was discussing substantive matters under the heading "Organization of work". He accordingly suggested that there should be an additional agenda item entitled "Other matters concerning the Committee's work".

9. Mr. SIMMA suggested that instead of placing a country on a waiting list, with the possibility that it might make preparations to appear and then have to cancel the arrangements made, the Committee should put five reports on its agenda and a further two countries which had never reported. Then, if a country happened to drop out, the country which had never reported would be taken up automatically. That would mean that a member of the Committee would need to take responsibility for the non-reporting country.

10. The CHAIRPERSON said that a list of issues would have to be prepared for the country which had been put in reserve. Then if one of the first five dropped out after giving the necessary three months' notice, the list of issues could be sent to the sixth Government.

11. Mr. GRISSA said that, judging by current procedure, the Committee could deal with six reports in nine and a half working days, which would leave ample time for other business. He asked whether the report on Hong Kong, to be considered at the next session, was expected to be as brief as that on Macao. If it was, both Libya and Guyana could be added to the list of reports to be considered.

12. The CHAIRPERSON said that with the addition of the discussion of preliminary observations and the adoption of concluding observations on each report, in practice a minimum of two days was needed for each country. Regarding the report on Hong Kong, he noted that the Government of the United Kingdom had gone to great lengths to submit a third report and was clearly hoping that the Committee would give it very full consideration. It had invited two members of the Committee to go to Hong Kong in advance of the session.

13. Summing up, he said there was clearly a consensus that the Committee should not again find itself in the position at the current session and that an effort should be made to increase the number of reports processed. It was therefore necessary to have a mechanism to provide an alternative if a State withdrew in good time. Thus, either a reporting State or a non-reporting State could be put on a waiting list. There seemed to be no objection to the proposal that the Committee should automatically take up one non-reporting

State at each session. The secretariat could perhaps arrange to insert a non-reporting State in the list after each five or six reporting States, in the appropriate chronological order. It was probably safe to assume that, in future, the list for each session would include two initial reports. He suggested that the schedule for the next session should include seven reports, the five already indicated, with the addition of Libya followed by the next non-reporting State on the list. Because of the brevity of the report on Macao it should be possible to discuss seven reports at the next session, but if necessary the Committee would be able to postpone the non-reporting State.

14. Mr. GRISSA pointed out that it would be necessary to appoint a member of the Committee to study the situation in the non-reporting State and make proposals.

15. The CHAIRPERSON said that a rapporteur had already been identified and a detailed dossier was already available.

16. Mr. CEAUSU asked which States parties were to be considered by the pre-sessional Working Group.

17. Mr. TIKHONOV (Secretary of the Committee) said that the pre-sessional Working Group was scheduled to consider Finland, Hong Kong, Libya, Guyana and Zimbabwe.

18. The CHAIRPERSON said he would take it there was agreement that the Committee should consider the reports of seven countries at its next session and that thereafter, it should take up six countries at each session, five regularly reporting countries and one non-reporting country.

19. It was so decided.

20. Mr. SIMMA requested that discussion of the report on Guinea should be postponed until the following week. The necessary information had not been in the file when required and he needed time to thoroughly acquaint himself with all relevant material.

21. Mr. CEAUSU suggested that with a view to avoiding such problems in the future, the Secretary could distribute 10 or 12 of the non-reporting countries between members of the Committee, who would write their own reports using private research and information received from non-governmental organizations (NGOs) and specialized agencies.

22. The CHAIRPERSON supported the idea but suggested that members should restrict themselves to five such countries, otherwise the reports would accumulate and might be out of date when finally brought before the Committee.

23. It was so agreed.

24. Ms. HODGES (International Labour Organization) asked for clarification of the expected contribution of specialized agencies and pointed out that appreciable efforts were involved in preparing the relevant reports.

25. The CHAIRPERSON assured her that specialized agencies would not be put under undue pressure.

26. Mr. TEXIER suggested that international NGOs might identify national NGOs which could serve as valuable sources of information for the Committee.

27. After a discussion on organization of work in which Mr. GRISSA, the CHAIRPERSON, Mr. AHMED and Mr. SIMMA took part, Mr. CEAUSU raised the issue of how the Committee should respond to letters and appeals received between sessions and asked the representative of the Centre for Human Rights to explain the approach adopted by other treaty bodies.

28. The CHAIRPERSON pointed out that the other treaty bodies did not permit oral interventions by NGOs in plenary meeting, although there was a growing tendency to welcome the informal participation of NGOs in the supply of information. It was the Committee on Economic, Social and Cultural Rights which had initiated the dialogue with NGOs.

29. Ms. KLEIN (Centre for Human Rights) said that the Committee on the Rights of the Child, for example, provided an opportunity for interchange with national NGOs within the framework of its Working Group. Other bodies, while not allowing NGOs to intervene orally either in its plenary meetings or in working groups, had developed a system of briefing immediately prior to the commencement of sessions.

30. The CHAIRPERSON reminded the Committee that at the beginning of the session it had received various requests for action from NGOs, including NGOs in Palestine with regard to Israel. The information had been forwarded to the Governments concerned for possible consideration and inclusion in their next reports. In some cases, Governments had promised to submit reports on the matter raised.

31. Obviously, the Committee could not ignore issues related to breaches of the Covenant simply because a particular country's report did not happen to be scheduled for consideration. While it was the Committee's duty to monitor Governments' compliance with their obligations, the Committee did not possess sufficient resources to deal with each and every violation highlighted by NGOs. A flexible compromise must be achieved. Speaking in a personal capacity, he said that, except in extraordinary circumstances, the Committee should not go beyond sending polite letters to the Governments concerned. It could not insist upon an immediate response. Since the range of possible violations of economic, social and cultural rights was so immense, it was difficult to establish criteria for determining whether one particular violation was more pressing than another. How could the relative importance of hunger in one country be compared with failure to respect basic labour rights in another?

32. Mr. SIMMA said that what was involved was not merely a choice between forwarding the information to another body or insisting that the Government concerned respond immediately. A middle path must be found. The Government could be told by letter that any violation was of great concern to the Committee and that a clarification of the matter would be welcome. The issue could not be ignored simply because the country did not happen to be on the

Committee's current list. Individual members continued to take an active interest in what was happening in those countries it had considered; the Committee could thus be said to have accumulated an "institutional memory". It should convey the idea that once a particular country's report had been considered, that was not the end of the matter. Such an approach would be more constructive than simply forwarding information received for other bodies to address.

33. Mr. RATTRAY said that the basic function of the Committee was being questioned. As a watchdog monitoring the performance of States in the field of economic, social and cultural rights, the Committee had a duty to respond appropriately to information received. The nature of that information could not be predetermined, nor could the Committee's response. In some cases, the Committee might be obliged to supply quasi-injunctive relief, or call upon a State to verify the information forwarded and give an immediate response while the Committee was in session. The Committee would have to take responsibility for making a preliminary judgement as to the reliability of the information received from NGOs. It must not assume an apologetic role, nor must it seek to evade from its responsibilities. The Committee would instinctively know when rights were being breached in a barbaric manner. In some instances, it would need to emphasize to the Government concerned that, if correct, the information received was disturbing since it pointed to a fundamental breach of the Covenant.

34. Mr. CEAUSU, concurring with the Chairperson, suggested further that any information received should be conveyed by the Chairperson, for action or for information, also to others competent to deal with it within the United Nations system, such as the United Nations High Commissioner for Human Rights, the Chairman of the Human Rights Committee, the Communications Branch of the Centre for Human Rights or a specialized agency. The Committee would not be shirking its responsibility but would simply be following proper procedure within the common system. All avenues must be used to verify allegations and help victims of violations.

35. The CHAIRPERSON said that his concern was that, even by letting it be known that it would forward serious complaints to other competent bodies through the "1503 procedure", the Committee would be opening the floodgates to communications from NGOs and would be coming close to establishing its own communications procedure.

36. Ms. HODGES (International Labour Organization), recalling that the receipt of communications was an established function in its Constitution, said that in the experience of ILO the volume of communications - 159 of them, for instance, in the last year alone - could indeed be heavy, often with persistent follow-up inquiries, requiring a very organized person in its secretariat to work on them full time. Allegations were immediately conveyed to States parties with a request for a reply, with which they generally complied, and those whose reports to ILO were due at the forthcoming session had the option of dealing with them then. ILO had a second system known as intervention by the Director-General, allowing him to write to non-party States for comment in the case of major violations and additionally to convey an expression of concern where the violation was flagrant. That procedure, however, did not automatically result in a quick answer.

37. Mr. GRISSA said that the ILO experience was not germane to the Committee because ILO was answerable to States parties, the labour movement and employers' organizations, whereas the Committee had a direct relationship only with States parties and was not beholden to NGOs. The Committee should be free to receive information and take it into consideration, but was under no obligation to act upon it.

38. Mr. SIMMA, agreeing that the Committee had full freedom as to its response to communications, observed that the usefulness of its work had none the less depended to a large extent of late on the information it gleaned from them. It would be a matter of common sense for any NGO active in the economic, social or cultural fields to ascertain whether the Committee could assist it, if only by conveying information in a quasi-official way to Governments, with a covering letter asking for an explanation in neutral terms. Considering the trickle of such communications the Committee had received thus far, it should not be an overwhelming task to deal with them by appointing one member as specific rapporteur in each instance.

39. Mrs. JIMENEZ BUTRAGUEÑO considered that the receipt of information from NGOs was of great service in the Committee's monitoring of States parties, and was especially important when the information involved States which were not parties to the Covenant. Taking into account the significance and, of course, reliability of any information received, the Committee should always answer such communications, for to do otherwise would be an affront to the organization in question. The timing of the communication should also be a factor; States parties due to submit reports shortly could be allowed to defer their replies until then. Perhaps the Committee could set up a working group of five - modelled on Working Group II of the Committee on the Elimination of Discrimination against Women, which dealt with discrete matters of detail - to handle communications, with each member contributing his or her useful familiarity with different countries.

40. Mr. TEXIER said that, not being an organization like ILO with a tripartite role, the Committee could not adopt the same procedures and must continue to focus on its exclusive relations with States. Like Mr. Simma, he did not think the Committee was likely to be inundated by a flood of communications from NGOs; communications should be answered on a case-by-case basis. Probably only allegations of relatively massive violations, as in Argentina and Israel, should prompt direct action by the Committee. Argentina's reply could be a follow-up to its recent report, whereas Israel could simply be sent a request for an explanation. The Committee should react appropriately and flexibly, in the light of a State party's willingness to respond. The Committee's concomitant dialogue with NGOs could only strengthen its activities and its experience over time with communications could become an argument for the adoption of an optional protocol.

41. Mr. AHMED said he believed there was a consensus on the middle-of-the-road approach being generally advocated, and proposed that Mr. Simma, Mr. Rattray and Mr. Texier should be asked to draft a letter for transmission to Israel in the low-key, objective tone they had advised.

Apparently Mr. Alvarez Vita was in the process of drafting two letters to Argentina. The drafts could be circulated to the Committee, which could then decide how to proceed.

42. It was so decided.

43. Mr. GRISSA said that he would be loath to set a precedent, especially in a case like that of Israel, where the Government was aware of the complaints being transmitted to the Committee and had deliberately done nothing to impede them. The Committee could not take orders from NGOs.

44. The CHAIRPERSON said that when an NGO criticized a Government, it was appropriate to notify that Government. The conveying of allegations did not impinge upon the Committee's primary role, and a Government was more likely to respond if the allegation were transmitted via the Committee rather than made directly by an organization or individual. After reviewing the draft letters, the Committee would be in a better position to judge the appropriateness of such an approach, which bore on its future work.

45. The Committee should also consider whether it would be productive to suggest to the Commission on Human Rights that its institutional arrangements for dealing with complaints concerning economic, social and cultural rights lagged behind those in place for receiving information on violations of other rights. It should also consider whether to propose that the Commission appoint a special rapporteur for economic, social and cultural rights, given the fact that virtually all its special rapporteurs dealt with civil and political rights.

46. Turning to the draft general comment on forced evictions, relating to article 11, paragraph 1, of the Covenant regarding the right to adequate housing, he informed the Committee that he would have one more page to add to it, dealing primarily with the reporting obligations of Governments and appealing to international organizations to take more account of such problems in their work. It should, however, be noted that the related issue of forced resettlement was the one area within the Committee's mandate that had in fact been taken very seriously by agencies like the World Bank, UNDP and the Organization for Economic Cooperation and Development.

47. The Committee had spent much time over the years discussing housing rights and the most tangible concomitant issue, forced evictions. It was a complex matter, in which the real problem was one of definition. The task was to define forced evictions in terms that were broadly applicable to the whole range of different situations. The draft general comment defined a forced eviction as an eviction involving force but which by definition was not carried out with the appropriate legal protection. The Committee had to define when an eviction was legal, and in what circumstances and under what conditions it should be carried out; it had to decide upon procedural requirements that were reasonable. Governments were to a surprising extent in agreement in theory with most of what was said in the draft general comment; they would usually argue that they carried out forced evictions after giving notice, after prior consultation, in accordance with the law, and with an attempt to relocate the people evicted. Governments must be able to evict

people, and there were many situations in which evictions were appropriate; the Committee was not endeavouring to ban evictions or even forced evictions.

48. There was a link between the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, article 17 of which proclaimed the right to the protection of the law from arbitrary or unlawful interference with one's home. Much of the right to adequate housing involved freedom from arbitrary or unlawful forced eviction, which was virtually indistinguishable from a standard civil and political right; indeed, the Human Rights Committee had made a general comment of its own on that point. It was an ideal opportunity for the Committee on Economic, Social and Cultural Rights to highlight the genuinely interrelated character of the sets of issues. It was also timely, in light of the forthcoming Habitat Conference, for the Committee to take advantage of the growing awareness on the part of NGOs and a large number of United Nations agencies of the right to adequate housing.

49. Mr. WIMER ZAMBRANO said that the term "forced evictions" was tautological in that an eviction was never other than forced. If it was voluntary it was not an eviction; the draft general comment should instead speak of "illegal" evictions.

50. The CHAIRMAN said that in a certain sense the term was tautological, but evictions were not forced when the person or persons evicted left their homes after being ordered to do so. It was important to discuss the terminology; two alternatives might be "arbitrary" and "illegal".

51. Mr. AHMED suggested using "justifiable" and "unjustifiable".

52. Mr. WIMER ZAMBRANO said that because there were cases which were legal under domestic law and illegal under international law, the term "legitimate" might be considered.

53. Mr. GRISSA considered that anything could be justified after the event. If a private landlord took his tenant to court for not paying the rent and the court ordered an eviction, should the Committee take up the matter? Would the landlord or the community be required to pay the social costs? That would violate another right, that of property. In the case of evicted persons who did not have the means to house themselves, the community should be responsible for providing at least temporary accommodation until they acquired the means to provide housing for themselves.

54. Mr. RATTRAY said that the concept of "forced eviction" implied that it was involuntary and that force had been used. It might be justified or unjustified, but it was important for an element of due legal process to have preceded it. Even where an eviction was forced, there was still the right to housing and the right to be resettled.

55. Mr. CEAUSU said that the prime concern should be whether evictions were carried out in inhumane circumstances that threatened the lives or health of the persons concerned, particularly children, elderly or sick persons, or pregnant women. In such cases, the draft general comment should state that no eviction could take place unless temporary shelter was provided.

56. Mr. AHMED said it was unrealistic to expect communities, which in most cases had insufficient means, to take responsibility for providing accommodation, even on a temporary basis.

57. Mr. SIMMA said that as with the procedure followed in previous general comments, for example on elderly and disabled persons it might be fruitful for the Committee to receive expert clarification of the terminology to be used.

58. Mr. MARCHAN ROMERO said that the Committee should seek to make a distinction between the gravity of different cases; to confine itself in its general comment to forced evictions might cause it to disregard other forms of illegal eviction. In his view, it might be useful to consider the term "unfair" evictions used by the General Assembly. An eviction might be legal even though forced, but in terms of the Covenant it might be considered "unfair".

59. Mr. TEXIER said the important point was that the right to satisfactory housing should prevail. An eviction might be lawful but not necessarily justified, and it was important that a property-owner should retain the right to evict a tenant who had the means to pay his rent but did not do so. Nevertheless, it was also important that there should be no resort to violence, especially involving women, children or elderly or sick persons. People should not simply be turned out on to the street without any recourse.

60. The CHAIRPERSON said that the Committee would be able to consider further the various suggestions that had been made following clarification of the terminology and once the draft general comment had been completed and made available in all languages.

The meeting rose at 6 p.m.